

## REMARKS

Claims 1-82 are pending. Claims 1-80 are under examination. Claims 1-82 have been canceled. New claims 83-156 have been added. Support for the new claims can be found throughout the specification and the claims as filed. In particular, support for the new claims can be found, for example, in original claims 1-80. In addition, support for new claim 116 can be found, for example, on page 30, paragraph 98. Support for new claims 119, 120, 126 and 127 can be found, for example, in Table 3, page 31. Support for new claims 121, 122, 128 and 129 can be found, for example, in Table 6, pages 42-44, and on page 42, paragraph 137. Accordingly, these new claims do not raise an issue of new matter and entry thereof is respectfully requested.

Applicants appreciate the time and helpful discussion in the telephone conference with Examiner Srivastava and Examiner Tate and Applicants' representatives on May 12, 2004.

### Rejections Under 35 U.S.C. § 103

The rejection of claims 1-80 under 35 U.S.C. § 103 as allegedly obvious over Cope, U.S. Patent No. 5,330,972, in view of Clark et al., U.S. Patent No. 5,837,256, and Yang et al., U.S. 2002/0025360, is respectfully traversed. Applicants maintain that Cope, alone or in combination with Clark et al. and/or Yang et al., does not teach or suggest the claimed compositions. Moreover, Applicants submit that these references do not teach or suggest the compositions of new claims 83-156.

As discussed in the telephone interview with Applicants' representatives and for the reasons of record, Applicants maintain that one skilled in the art would have had no motivation to combine the cited references to obtain Applicants' claimed compositions. As acknowledged in the previous Office Action mailed May 20, 2003, Cope does not teach or suggest a composition comprising all of the claimed ingredients, and the Office Action in particular indicated that Cope does not describe sources of dietary fiber, flavonoid and isoflavone synergist. The Office Action further acknowledged that neither of Cope or

Clark et al. teaches a composition comprising curcumin, lycopene, hesperidin or quercetin.

As discussed in the previous response with regard to Cope, this reference describes a high protein, low fat, calorically dense product for HIV infected and AIDS patients. Clark et al. describes the use of secoisolariciresinol derived from flaxseed to treat lupus nephritis. Yang et al. describes a chewy confectionary composition, i.e., chewing gum. As asserted in the previous and current Office Actions, the combination of all three references is required to obtain Applicant's claimed invention. Such reasoning to combine these references requires that one skilled in the art be motivated to combine a nutritional product for treating HIV infected and AIDS patients with a compound for treating lupus nephritis and chewing gum to obtain Applicants' claimed invention. Applicants respectfully maintain that the motivation to make such a combination is clearly lacking in the cited references.

Furthermore, not only are the three cited references directed to completely different uses, thus providing no motivation to look at these unrelated references to obtain the claimed invention, none of the references provide any indication of a deficiency that would have motivated one skilled in the art to look at any of the other references to supply a missing deficiency. Absent any teaching or suggestion to combine the cited references, Applicants maintain that the claims are unobvious over the cited references.

Applicants respectfully maintain that the only way the disclosures of Cope, Clark et al. and Yang et al. can be read to result in the claimed compositions is with benefit of Applicants' disclosure, and such hindsight is clearly improper. Applicants maintain that there is no teaching or suggestion in any of the cited references to motivate one skilled in the art to combine the cited references. Absent such a teaching or suggestion, it is respectfully maintained that the claimed compositions are unobvious over Cope, Clark et al. and/or Yang et al. Accordingly, Applicants respectfully request that this rejection be withdrawn.

**CONCLUSION**

In light of the amendments and remarks herein, Applicants submit that the claims are now in condition for allowance and respectfully request a notice to this effect. The Examiner is invited to call the undersigned agent if there are any questions.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 502624 and please credit any excess fees to such deposit account.

Respectfully submitted,

MCDERMOTT WILL & EMERY LLP



Deborah L. Cadena

Registration No. 44048

4370 La Jolla Village Drive, Suite 700  
San Diego, CA 92122  
858.535.9001 DLC:cec  
Facsimile: 858.597.1585  
**Dated: July 19, 2004**